

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS DIVISION**

ROBERT D. TAYLOR,

Plaintiff,

v.

**Civil Action No. 2:12-cv-3
JUDGE BAILEY**

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

**REPORT AND RECOMMENDATION TO THE DISTRICT JUDGE
RECOMMENDING THAT THE DISTRICT COURT DISMISS THIS CASE
WITH PREJUDICE AND STRIKE IT FROM THE DOCKET OF THE COURT**

On January 17, 2012, Plaintiff Robert D. Taylor (“Plaintiff”), proceeding *pro se*, filed a Complaint in this Court to obtain judicial review of the final decision of Defendant Michael J. Astrue, Commissioner of Social Security (“Commissioner” or “Defendant”), pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g). (Complaint, ECF No. 1.)

On March 19, 2012, the Commissioner, by counsel Helen Campbell Altmeyer, Assistant United States Attorney, filed an answer and the administrative record of the proceedings. (Answer, ECF No. 8; Administrative Record, ECF No. 9.) The Commissioner also filed a certificate of service on March 19, 2012, certifying that the answer and record had been served on Plaintiff by United States mail, postage prepaid. (Certificate of Service, ECF No. 10.)

Pursuant to Local Rule of Civil Procedure 9.02(c), Plaintiff was required to file his motion for summary judgment within thirty (30) days after the Defendant filed his answer and a complete

copy of the administrative record. LR Civ. P. 9.02(c). By April 19, 2012, Plaintiff had not filed his motion for summary judgment or a motion for an extension of time. On April 23, 2012, the Court entered an Order for Plaintiff to show cause within fourteen (14) days why his case should not be dismissed with prejudice for the failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Order to Show Cause, ECF No. 12.) As of May 8, 2012, Plaintiff has not filed a motion for summary judgment, a motion for an extension of time, or any kind of response to the Court's order to show cause.

This Court has the authority to dismiss an action with prejudice for the Plaintiff's failure to prosecute under Federal Rule of Civil Procedure 41(b). *See Fed. R. Civ. P. 41.* This Court may exercise its authority to dismiss for failure to prosecute *sua sponte*, and may even do so without giving notice or an adversarial hearing, provided that due process standards are met. *See Link v. Wabash Railroad*, 370 U.S. 626, 630-31 (1962). As of this date, Plaintiff has been given over fifteen (15) additional days beyond the deadline to file a motion for summary judgment or an extension of time. Additionally, this Court's Order to show cause put Plaintiff on notice that his case may be dismissed if he fails to file some form of document indicating that he intends to prosecute his case. This Court has given Plaintiff every opportunity to avoid dismissal of this matter, yet no action has been taken by Plaintiff to prosecute his case.

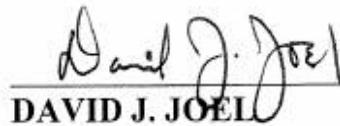
For the reasons herein stated, the undersigned Magistrate Judge **RECOMMENDS** that this case be **DISMISSED WITH PREJUDICE** and **STRICKEN FROM THE DOCKET** for the failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the

Report and Recommendation to which objection is made and the basis for such objection. A copy of such objections should also be submitted to the Honorable John Preston Bailey, Chief United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984).

The Court directs the Clerk of the Court to provide a copy of this Report and Recommendation to all parties who appear *pro se* and all counsel of record, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

Respectfully submitted this **8th** day of **May, 2012**.



DAVID J. JOEL
UNITED STATES MAGISTRATE JUDGE